IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Keith A. Lowery, et al.
Serial No.:	09/590,760
Filing Date:	June 8, 2000
Confirmation No.:	9892
Group Art Unit:	2141
Examiner:	Kristie D. Shingles
Title:	METHOD AND APPARATUS FOR CONTENT SYNCHRONIZATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

APPEAL BRIEF

Applicant has appealed to the Board of Patent Appeals and Interferences from the final decision of the Examiner mailed June 26, 2006, the Advisory Action mailed September 25, 2006 and the Notice of Panel Decision from Pre-Appeal Brief Review mailed November 15, 2006 finally rejecting Claims 1-8, 10-16, and 18-29. Applicant respectfully submits herewith their brief on appeal.

REAL PARTY IN INTEREST

The present Application was assigned by the inventors to epicRealm Inc., a Delaware corporation, as indicated by an assignment from the inventors recorded on June 8, 2000 in the Assignment Records of the United States Patent and Trademark Office at Reel 010870, Frames 0177-0180, with a corrected assignment being recorded on September 21, 2000 at Reel 011109, Frames 0695-0700, and another corrected assignment being recorded on December 22, 2000 at Reel 011394, Frames 0748-0753. Subsequently, epicRealm Inc. changed its name to epicRealm Operating Inc. indicated by a change of name document recorded on April 6, 2001 in the Assignment Records of the United States Patent and Trademark Office at Reel 011685, Frames 0637-0639. The application was subsequently assigned by epicRealm Operating Inc. to epicRealm Licensing LLC, a Delaware corporation, as indicated by an assignment recorded on April 8, 2005 in the Assignment Records of the United States Patent and Trademark Office at Reel 015878, Frames 0593-0597.

RELATED APPEALS AND INTERFERENCES

There are no known appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

STATUS OF CLAIMS

Claims 1-8, 10-16, and 18-29 stand rejected pursuant to a Final Action mailed June 26, 2006. Claims 9 and 17 have been canceled without prejudice or disclaimer. Claims 1-8, 10-16, and 18-29 are all presented for appeal.

STATUS OF AMENDMENTS

A Response to Examiner's Action was filed on December 22, 2003 in response to an Office Action mailed October 6, 2003. Claims 1, 12, 20, 24, and 27 were amended and Claim 9 was canceled. A Response to Examiner's Final Action was filed on May 10, 2004 in response to a Final Action mailed March 12, 2004. No amendments were made to the claims. A Notice of Appeal was filed on June 11, 2004 but a Request for Continued Examination was filed on August 4, 2004 in response to an Advisory Action mailed June 24, 2004. No amendments were made to the claims. A Response to Examiner's Action was filed on February 7, 2005 in response to an Office Action mailed November 5, 2004. Claims 1, 24, and 27 were amended and Claim 17 was canceled. A Response to Examiner's Final Action was filed on September 1, 2005 in response to a Final Action mailed June 1, 2005. No further amendments to the claims were made. A Request for Continued Examination was filed on October 27, 2005 in response to an Advisory Action mailed October 4, 2005. Claims 1, 11, 24, and 25 were amended. A Response to Examiner's Action was filed on April 24, 2006 in response to an Office Action mailed January 23, 2006. No further amendments to the claims were made. A Response to Examiner's Final Action was filed on August 28, 2006 in response to a Final Action mailed June 26, 2006. No further amendments to the claims were made. An Advisory Action issued September 25, 2006. Applicant filed a Notice of Appeal and Pre-Appeal Brief Request for Review on October 26, 2006. A Notice of Panel Decision from Pre-Appeal Brief Review issued on November 15, 2006 stating that the appeal is to proceed to the Board of Patent Appeals and Interferences.

SUMMARY OF CLAIMED SUBJECT MATTER

With respect to Independent Claim 1, a method for processing data is provided. (See FIGURE 3 and page 4, lines 6-11). The method includes receiving data at a cache server 32. (See FIGURE 3 and page 19, lines 28-32). A data center manager 16 receives a data change message 28 from a trigger 21 associated with a data source 20, the data change message 28 generated in response to a change in the content of the data. (See FIGURE 3 and page 13, lines 15-21). An expiration command 24 is generated at the data center manager 16 in response to the data change message 28. (See FIGURE 3 and page 23, lines 23-24. The expiration command 24 is received at the cache server 32 from the data center manager 16, (See FIGURE 3 and page 24, lines 5-15). Data is marked as expired according to the expiration command 24. (See FIGURE 3 and page 24, lines 19-23).

With respect to Independent Claim 24, a method is provided for providing efficient data access service. (See page 4, lines 12-22). The method includes subscribing an origin server 18 to a data center 14. (See page 4, lines 12-16). A data request 22 is routed from a browser 12 to the data center 14. (See FIGURE 3 and page 10, lines 24-26). The data request 22 requests a dynamic content item and having an associated address indicating the origin server 18. (See page 8, lines 2-3). Before expiration of the dynamic content item, a data change message 28 is received at a data center manager 16 from a trigger 21 associated with the dynamic content item. (See FIGURE 3 and page 13, lines 15-21). The data change message 28 is generated in response to a change in the content of the dynamic content item. (See FIGURE 3 and page 13, lines 16-19). An expiration command 24 is generated at the data center manager 16 in response to the data change message 28.

(See FIGURE 3 and page 23, lines 23-24). The expiration command 24 is received from the data center manager 16 and an expiration time of the dynamic content item may be updated in accordance with the expiration command 24. (See FIGURE 3 and page 23, lines 14-19). A determination is made as to whether the dynamic content item is available at the data center 14 according to the expiration time of the dynamic content item. (See FIGURE 6, step 320, and page 63, lines 29-30). The dynamic content item is generated at the origin server 18 when the dynamic content item is unavailable at the data center 14. (See page 10, lines 31-32, and page 11, lines 1-12). The dynamic content item is retrieved from the origin server 18 when the content item is unavailable at the data center 14. (See FIGURE 6, step 332, and page 65, lines 2-4). The dynamic content item is then communicated to the browser 12. (See FIGURE 6, step 338, and page 65, lines 13-14).

With respect to Independent Claim 27, a system for processing data is provided. (See FIGUREs 1 and 3 and page 4, lines 23-30). The system 10 includes a data center 14 operable to receive a request 22 from a client 11. (See FIGUREs 1 and 3, page 7, lines 19-31, and page 10, lines 18-30). System 10 also includes a data center manager 16 coupled to a data source 20 and the data center 14. (See FIGUREs 1 and 3 and page 12, lines 23-24). The data source 20 is operable to generate a data change message 28 in response to a change in the content of data associated with the data source 20. (See FIGUREs 1 and 3 and page 13, lines 15-21). The data center manager 16 is operable to receive the data change message 28 and generate an expiration message 24 in response to the data change message 28. (See FIGUREs 1 and 3 and page 23, lines 23-24). The data center manager 16 is operable to

send the expiration message 24 to a cache server 32. (See FIGUREs 1 and 3 and page 23, lines 30-32).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Did the Examiner err in concluding that Claims 1-8, 10-16, and 18-29 were obvious under 35 U.S.C. §103(a) in view of U.S. Patent No. 6,748,385 issued to Rodkin, et al. and U.S. Patent No. 6,038,601 issued to Lambert, et al.?

ARGUMENT

1. Claims 1-8, 10-16, and 18-29 stand rejected under 35 U.S.C. §103(a) as being obvious over Rodkin, et al. in view of Lambert, et al. According to M.P.E.P. §2143, to establish a prima facie case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to combine the references. Second, there must be a reasonable expectation of success. Third, the prior art combination of references must teach or suggest all the claim limitations. The Examiner has not established that any criteria for a prima facie case of obviousness has been met in this instance.

First, there is no suggestion or motivation in the Rodkin, et al. patent or the Lambert, et al. patent to combine them as proposed by the Examiner. The Examiner has failed to show that there is some teaching, suggestion, or motivation to combine the Rodkin, et al. patent and the Lambert, et al. patent as proposed. The Rodkin, et al. patent is directed to dynamic insertion and updating of hypertext links for internet servers. The Lambert, et al. patent is directed to storing and delivering documents on the Internet. The Examiner has not cited any language within the Rodkin, et al. patent or the Lambert, et al. patent that would suggest any capability for them to be combined. The Examiner states that one of ordinary skill in the art would be motivated to provide the feature of the claimed invention, presumably taught by the Lambert, et al. patent, in the Rodkin, et al. patent. The rationale provided by the Examiner for their combination is purely subjective conjecture and speculation with no objective reasoning being provided to support combining the references as has been proposed. The Examiner is merely taking bits and pieces of unrelated subject matter in an improper hindsight attempt at reconstructing the claimed invention. Since the

Examiner has used the claim language in a hindsight attempt to support the combination of the references, the burden to establish the first criteria of a prima facie case of obviousness has not been met.

In addition, no objective reasoning whatsoever was provided by the Examiner for combining the references as has been proposed other than through an improper hindsight reconstruction of the claimed invention. The Examiner has merely provided baseless and subjective conclusory "it would have been obvious to combine" statements using improper hindsight reconstruction without any support for such conclusory statements from any of the cited references. A statement that modifications of the prior art to meet the claimed invention would have been well within the ordinary skill of the art at the time the claimed invention was made because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. See M.P.E.P. 2143.01. Since the Examiner has not provided any proper reasoning, let alone objective reasoning, the burden to establish the first criteria of a prima facie case of obviousness has not been met.

Second, a reasonable expectation of success has not been shown by the Examiner. The combination of the Rodkin, et al. patent and the Lambert, et al. patent would not be capable of performing the operation required by the claimed invention. There is no showing by the Examiner that the functions of any of the Rodkin, et al. patent and the Lambert, et al. patent would be able to operate in a single system. There has also been no showing that the combined references would even be able to perform the functionality of the claimed invention.

The proposed combination attempts to combine incompatible processing techniques that have not been shown to be capable of operating according to any degree of predictability. The Rodkin, et al. patent and the Lambert, et al. patent are addressing two different problems. The storing and delivering of information implementation provided in the Lambert, et al. patent performs a completely different operation than the location updating performed by the Rodkin, et al. patent. The Examiner, without the improper hindsight look through the claimed invention, has not addressed how the proposed combination of the Rodkin, et al. patent and the Lambert, et al. patent would have any success whatsoever let alone a reasonable expectation of success. Therefore, Applicant respectfully submits that the Examiner has failed to establish the second criteria for a prima facie case of obviousness.

Third, the Examiner has not shown that the proposed Rodkin, et al. - Lambert, et al. combination teaches or suggests all of the claim limitations. For example, Independent Claims 1, 24, and 27 recite in general an ability to receive at a data center manager a data change message from a data source, the data change message being generated in response to a change in the content of the data, and generating an expiration command at the data center manager in response to the data change message. By contrast, the Rodkin, et al. patent is directed to updating hyperlinks to data as the data associated with the hyperlink is re-located to a new hyperlink or the hyperlink expires. However, the Rodkin, et al. patent has no capability to identify whether the data content of the text files have been changed as opposed to changes to a hyperlink to the data and so is not capable of generating a data change message in response to any data content change. Accordingly, the Rodkin, et al. patent cannot

generate a data change message as it does not receive any indication that a content of a text file has been changed. In addition, the Lambert, et al. patent fails to provide or receive any indication that the content of a data item has been changed and thus is also incapable of generating a data change message in response to a change in data content.

The Examiner indicates that the Rodkin, et al. patent discloses an ability to receive an indication that content has been changed. The Examiner states that the content server of the Rodkin, et al. patent queries a central server for address information and the central server will provide any updated address information to the content server. However, this address information is associated with hyperlinks identifying data location corresponding to particular character strings in a text file. The Rodkin, et al. patent discloses a technique to keep these hyperlinks current. There is no mechanism in the Rodkin, et al. patent to handle a situation where the content of the text file itself has been changed. Thus, the Examiner's proposed Rodkin, et al. - Lambert, et al. combination does not have a capability to identify changes in data content as required in the claimed invention.

Moreover, neither the Rodkin, et al. nor Lambert, et al. patents provide an ability to generate an expiration command at the data center manager in response to the data change message since there is no data change message generated or any ability to identify a change in the content of data disclosed in either of these patents. The portions of the Rodkin, et al. patent cited by the Examiner are merely directed to assigning an expiration date to a hyperlink destination address. The portions of the Lambert, et al. patent cited by the Examiner are merely directed to assigning an expiration date to content in a server upon being cached. However,

neither the Rodkin, et al. nor Lambert, et al. patents have an expiration date being established in response to a data change message or marking the data as expired triggered by a change in the content of the data as required by the claimed invention. Thus, the structure that would result from placing the retrieval of non-cached content of the Lambert, et al. patent into the hyperlink update scheme of the Rodkin, et al. patent would still lack an ability to receive a data change message generated in response to a change in the content of data and generation of an expiration command in response to the data change message as provided by the claimed invention.

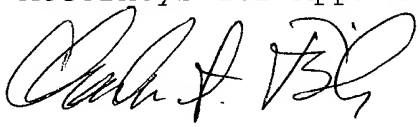
Thus, the Examiner has failed to establish the third criteria for a prima facie case of obviousness. As a result of the improper combination of the references, the lack of any expectation of success for the combination, and the lack of disclosure in the patents being combined by the Examiner, there is an insufficient basis to support the rejection of the claims.

CONCLUSION

Applicant has clearly demonstrated that the present invention as claimed is clearly distinguishable over all the art cited of record, either alone or in combination, and satisfies all requirements under 35 U.S.C. §§101, 102, and 103, and 112. Therefore, Applicant respectfully requests the Board of Patent Appeals and Interferences to reverse the final rejection of the Examiner and instruct the Examiner to issue a Notice of Allowance of all claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments associated with this Application to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant



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CLAIMS APPENDIX

1. (Previously Presented) A method for processing data comprising:

receiving data at a cache server;

receiving at a data center manager a data change message from a trigger associated with a data source, the data change message generated in response to a change in the content of the data;

generating an expiration command at the data center manager in response to the data change message;

receiving the expiration command at the cache server from the data center manager; and

marking the data as expired according to the expiration command.

2. (Original) The method for processing data according to Claim 1 further comprising:

receiving a data request at the cache server from a remote computer, the data request requesting data from the cache server;

determining whether the requested data is available at the cache server;

retrieving the requested data from an origin server when the requested data is unavailable; and

communicating the requested data from the cache server to the remote computer.

3. (Original) The method for processing data according to Claim 2 wherein the data comprises a web page and further comprising generating the web page at an origin server.

4. (Original) The method for processing data according to Claim 3, wherein generating the web page comprises generating the web page based on the data request.

5. (Original) The method for processing data according to Claim 2, wherein determining whether the requested data is available comprises:

determining whether the requested data is present at the cache server; and

determining whether the requested data is current when the requested data is present at the cache server.

6. (Original) The method for processing data according to Claim 2, wherein retrieving the requested data comprises controlling, by the flow control server, retrieval by the cache server of the requested data from the origin server.

7. (Original) The method for processing data according to Claim 6, wherein controlling retrieval comprises:

determining at the flow control server a current load associated with the origin server;

prioritizing at the flow control the requested data; and

determining when the cache server retrieves the requested data based on the current load and the priority of the requested data.

8. (Original) The method for processing data according to Claim 7, wherein determining whether to grant permission comprises:

granting permission to the cache server when the current load is below a predetermined threshold; and

denying permission to the cache server when the current load exceeds the predetermined threshold.

9. (Canceled).

10. (Previously Presented) The method for processing data according to Claim 1 further comprising generating the expiration command at the data center manager in response to the elapsing of a predetermined period of time.

11. (Previously Presented) The method for processing data according to Claim 1, wherein generating the expiration command comprises:

detecting a change in the data associated with the origin server by a trigger associated with the data;

generating a data change command indicating at least one changed item of content; and

communicating the data change command to the data center manager.

12. (Previously Presented) The method for processing data according to Claim 1, wherein marking the data as expired comprises receiving the expiration command from the data center manager and determining the data to expire as a function of the expiration command.

13. (Original) The method for processing data according to Claim 12, wherein the expiration command expires a single web page.

14. (Original) The method for processing data according to Claim 12, wherein the expiration command expires a plurality of web pages.

15. (Original) The method for processing data according to Claim 12, wherein the expiration command expires a plurality of web pages at a plurality of web sites.

16. (Original) The method for processing data according to Claim 12, wherein the expiration command expires a plurality of web pages at a plurality of domains.

17. (Canceled).

18. (Original) The method for processing data according to Claim 1, wherein the data comprises a web page using the hypertext markup language.

19. (Original) The method for processing data according to Claim 1, wherein the expiration command comprises an Internet Cache Synchronization Protocol command.

20. (Previously Presented) The method for processing data according to Claim 19, wherein the expiration command comprises an Internet Cache Synchronization Protocol terse command and further including generating the expiration command at the data center manager in response to an Internet Cache Synchronization Protocol verbose command.

21. (Original) The method for processing data according to Claim 1, wherein the data has an associated request element identifying the data, the request element having a first portion and a second portion distinct from the first portion and wherein receiving data at the cache server comprises:

filtering the first portion of the request element based on predetermined criteria associated with an origin server associated with the data; and

identifying the data based on the second portion of the request element.

22. (Original) The method for processing data according to Claim 21 further comprising:

receiving a request at the cache server, a first portion of the request being distinct from the first portion of the request element and a second portion of the request being substantially similar to the second portion of the request element; and

retrieving the data as a function of the second portion of the request and the second portion of the request element.

23. (Original) The method for processing data according to Claim 22, wherein the request element comprises a uniform resource locator and the request comprises a uniform resource locator.

24. (Previously Presented) A method for providing efficient data access service comprising:

subscribing an origin server to a data center;

routing a data request from a browser to the data center, the data request requesting a dynamic content item and having an associated address indicating the origin server;

receiving at a data center manager, before expiration of the dynamic content item, a data change message from a trigger associated with the dynamic content item, the data change message generated in response to a change in the content of the dynamic content item ;

generating an expiration command at the data center manager in response to the data change message;

receiving the expiration command from the data center manager;

updating an expiration time of the dynamic content item in accordance with the expiration command;

determining whether the dynamic content item is available at the data center according to the expiration time of the dynamic content item;

generating the dynamic content item at the origin server when the dynamic content item is unavailable at the data center;

retrieving the dynamic content item from the origin server when the content item is unavailable at the data center; and

communicating the dynamic content item to the browser.

25. (Original) The method for providing efficient data access service according to Claim 24, wherein subscribing the origin server comprises transferring domain name resolution service to the data center and wherein routing the data request comprises resolving the address associated with the origin server.

26. (Original) The method for providing efficient data access service according to Claim 24, wherein determining whether the dynamic content item is available comprises:

determining whether the dynamic content item is present at the data center; and

determining whether the dynamic content item is current when the content item is present at the data center.

27. (Previously Presented) A system for processing data comprising:

a data center operable to receive a request from a client; and

a data center manager coupled to a data source and the data center, the data source operable to generate a data change message in response to a change in the content of data associated with the data source, and the data center manager operable to receive the data change message and generate an expiration message in response to the data change message, the data center manager operable to send the expiration message to a cache server.

28. (Original) The system for processing data according to Claim 27, wherein the data center comprises a web server, a cache server and a flow control server.

29. (Original) The system for processing data according to Claim 28, wherein the web server is operable to receive the request from the client, wherein the cache server is operable to store data received from the origin server and wherein the flow control server is operable to prioritize the request and control the cache server.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None

CERTIFICATE OF SERVICE

None